



Kansas Statutes Annotated

Chapter 65- Public Health
Article 34- Solid Waste

and

Administrative Regulations

Article 55- PCB Facility Construction Permit Regulations

Kansas Department of Health and Environment
Division of Environment
Bureau of Waste Management
1000 SW Jackson, Suite 320
Topeka, Kansas 66612-1366
(785) 296-1600
www.kdhe.state.ks.us/waste

Kansas Department of Health and Environment
Bureau of Waste Management

PCB Statutes Annotated and Administrative Regulations

First Printing.....April 2002

Table of Contents

Kansas Statutes Annotated

Article 34. Solid Waste

65-3480. Regulation of PCB disposal facilities; definitions.	1
65-3481. Same; permit system established by rules and regulations of secretary of health and environment, contents.	2
65-3482. Same; permit required to modify or construct disposal facility; duties of secretary	2
65-3483. Same; permit review	2
65-3485. Same; reasons for approval or denial of application required; appeals.	4
65-3486. Same; application for permit required, contents; application fee; investigation and inspection by secretary.	4
65-3487. Same; time for decision of secretary on applications; extensions.	5
65-3489. Same; applicability of act.	6
65-3490. Same; violations of act; notice and penalties; appeals.	6

Kansas Administrative Regulations

Article 55. PCB Facility Construction Permit Regulations	7
28-55-1. Applicability and definitions.	7
28-55-2. PCB facility construction permit application.	7
28-55-3. Procedures for review of PCB (polychlorinated biphenyl)	7
28-55-4. Modification or transfer of permits.	9
28-55-5. Standards for PCB facilities.	9

65-3480. Regulation of PCB disposal facilities; definitions. When used in this act:

(a) "department" means the Kansas department of health and environment;

(b) "disposal" means the discharge, deposit, injection, dumping, spilling, leaking or placing of any PCB into or on any water or land so that such substance or any constituent thereof may enter the environment or be emitted into the air or discharged into any waters, including groundwater;

(c) "facility" means all land, structures and other appurtenances and improvements on the land utilized for the purpose of treating, storing or disposing of PCB. A facility may consist of several treatment, storage or disposal operational units;

(d) "generator" means any person, by site, whose act or process produces PCB or whose act first causes PCB to become subject to regulation;

(e) "modification" means the expansion or enlargement of a facility beyond the boundaries established by an existing permit or any material or substantial alteration or addition to an existing permitted facility which would justify the application of permit conditions that would be materially or substantially different from the conditions of the existing permit or are absent from the existing permit;

(f) "off-site facility" means a facility where treatment, storage or disposal activities are conducted by a person other than the PCB generator;

(g) "on-site facility" means a facility which is owned and operated by the generator for the treatment, storage or disposal of PCB which have been generated on the property on which such facility is located and which may be divided by public or private right-of-way, provided the entrance and exit between the properties is at a crossroads intersection and access is by crossing and not going along the right-of-way or noncontiguous properties owned by the same person;

(h) "Permit" means the document issued to a person by the secretary which allows such

person to construct and operate a PCB treatment, storage or disposal facility in the state;

(i) "Person" means an individual, trust, firm, joint stock company, federal agency, corporation, including a government corporation, partnership, state, municipality, commission, political subdivision of a state or any interstate body;

(j) "Polychlorinated biphenyls" or "PCB" means any chemical substance that is limited to the biphenyl molecule which has been chlorinated to varying degrees or any combination of any chemical substance which contains the biphenyl molecule at concentrations as established by the secretary;

(k) "PCB disposal facility" means any off-site facility used to treat, store or dispose of PCB, including any such facility which handles or stores PCB under contract prior to disposal;

(l) "secretary" means the secretary of the department of health and environment;

(m) "storage" means the holding of PCB except for a temporary period at the end of which such substance is treated or disposed of elsewhere;

(n) "transporter" means any person who is engaged in the off-site transportation of PCB by air, rail, land, highway, pipeline or water;

(o) "treatment" means any method, technique or process, including incineration or neutralization, designed to change the physical, chemical or biological character or composition of any PCB so as to neutralize such substance or so as to recover energy or material resources from the PCB, to render such substance nontoxic or less toxic, safer to transport, store or dispose of, amenable for recovery, amenable for storage or reduced in volume.

History: L. 1986, ch. 226, § 1; L. 1992, ch.192 § 8; July1.

65-3481. Same; permit system established by rules and regulations of secretary of health and environment, contents. The secretary shall:

(a) Adopt rules and regulations establishing a permit system which includes standards for facilities and procedures for implementation of a permit system for the construction or modification of a PCB disposal facility including, but not limited to, content of applications, evidence of financial responsibility, existing hydrogeological characteristics, environmental assessment, training of personnel, qualifications of ownership, continuity of operation and public notification and participation; and

(b) adopt any other rules and regulations necessary to enforce the provisions of this act.

History: L. 1986, ch. 226, § 2; May 8.

65-3482. Same; permit required to modify or construct disposal facility; duties of secretary and -hazardous waste disposal facility approval board.

(a) After the effective date of this act, no person shall modify or construct a PCB disposal facility without a permit issued by the secretary under this act.

(b) Upon receipt of an application for a permit to construct a PCB disposal facility which complies with the requirements of this section, the secretary shall:

(1) Publish a notice once each week for three consecutive weeks in a newspaper of general circulation in the county in which the facility is proposed to be located. The required published notice shall contain a map indicating the location of the proposed facility and shall contain a description of the proposed action and the location where the permit application and related documents may be reviewed and where copies may be obtained. The notice shall describe the procedure by which the permit may be granted. The secretary shall transmit a copy of the notice to the clerk of any city which is located within three miles of the proposed facility.

(2) Review the plans of the proposed facility to determine if the proposed facility complies with this act and the rules and regulations promulgated under this act. The review shall include, but not be limited to, air quality, water quality, waste management and hydrogeology.

If the facility review and the application meet the requirements of this act and the rules and regulations promulgated under this act, the secretary shall recommend approval for construction or modification of the facility which may contain conditions specifically applicable to the facility and operation. An expansion, enlargement or modification of a facility beyond the specified areas indicated in the existing permit constitutes a new proposal for which a new construction permit application is required.

(c) The secretary shall recommend approval or shall deny a construction permit application within 240 days after the secretary receives an application meeting the requirements of this section. If the secretary recommends approval, the secretary immediately shall notify the applicant. If the secretary recommends denial, the secretary shall notify the applicant in writing of the reasons for the denial.

History: L. 1986, ch. 226, § 3; L.1992, ch. 192, § 9; July 1

65-3483. Same; procedure for review and approval by the secretary of disposal facility; timetable for consideration; notice requirements; considerations required.

(a) If, within 150 days after receipt of an application requiring approval of the board the secretary has not denied the application, the secretary shall notify the board of county commissioners and the governing bodies of all cities located within a ten-mile radius of the proposed facility. The secretary also shall notify the state corporation commission and the secretary of wildlife and parks of the proposed facility.

(b) If the secretary recommends that such application should be approved, the secretary shall immediately notify the county commissioners and the governing bodies of all cities located within a ten-mile radius of the proposed facility.

(c) Within 10 days after the secretary has determined that such application should be approved, the secretary shall:

(1) Set a date and arrange for publication of

notice of a public hearing in a newspaper having major circulation in the vicinity of the proposed facility. Such hearing shall be in the county in which the proposed facility will be located. Additional hearings may be held at such other places as the secretary deems suitable. At such hearing or hearings, the applicant may present testimony in favor of the application. Any person may appear or be represented by counsel to present testimony in support of or opposition to the application. The public notice shall:

(A) Contain a map indicating the location of the proposed facility, a description of the proposed action and the location where the application may be reviewed and where copies may be obtained.

(B) Identify the time, place and location for the public hearing held to receive public comment and input on the application.

(2) Publish the notice not less than 30 days before the date of the public hearing.

(d) Comment and input on the proposed facility may be presented orally or in writing at the public hearing, and shall continue to be accepted in writing by the board for 15 days after the public hearing date.

(e) The secretary shall consider the impact of the proposed facility on the surrounding area in which it is to be located and make a final determination on the application.

(f) The board shall consider, at a minimum:

(1) The risk and impact of accident during the transportation of PCB;

(2) the risk and impact of contamination of ground and surface water by leaching and runoff from the proposed facility;

(3) the risk of fires or explosions from improper storage and disposal methods;

(4) the impact on the surrounding area where the proposed facility is to be located in terms of the health, safety, cost and consistency with local planning and existing development. The board also shall consider local ordinances, permits or other requirements and their potential relationship to the proposed facility;

(5) an evaluation of measures to mitigate adverse effects;

(6) the nature of the probable environmental impact including the specification of the

predictable adverse effects on the following:

(A) The natural environment and ecology;

(B) public health and safety;

(C) scenic, historic, cultural and recreational value; and

(D) water and air quality and wildlife.

(g) The secretary also shall consider the concerns and objections submitted by the public. The secretary shall facilitate efforts to provide that the concerns and objections are mitigated by establishing addition stipulations specifically applicable to the proposed site and operation at that site. The secretary, to the fullest extent practicable, shall integrate by stipulation the provisions of the local ordinances, permits or requirements.

(h) The secretary may seek the advice, which shall be given in writing and entered into the public record of the public hearing, of any person in order to render a decision to approve or deny the application.

History: L. 1986, ch. 226, § 4; L. 1989, ch. 118, § 178; L. 1992, ch. 192, § 10; July 1.

65-3484. Same; conditions precedent to approval of application.

(a) The secretary shall not approve any application, unless the secretary finds on the basis of information submitted by the applicant or any interested party, that: (1) The proposed facility location:

(A) Is suitable for the type and amount of PCB intended for treatment or disposal at the facility;

(B) provides protection to the public health and safety and environment of Kansas from the release of the PCB stored, treated or disposed of at the facility; and

(C) is situated a sufficient distance from populated residential areas and areas of urban residential growth to protect the public health and safety, accessible by transportation routes that minimize a threat to the public health and safety, and to the environment and sufficient distance from parks, wilderness and recreation areas to prevent adverse impacts on the public use and enjoyment of those areas.

(2) The proposed PCB disposal facility has no major adverse impact on either the public health

and safety or the environment of adjacent lands.

(3) The owner, any parent company of the owner and the operator have adequate financial and technical capability to properly construct and operate the facility.

(4) The compliance history of the owner, including any parent company of the owner, and the operator in owning and operating other similar facilities, if any, indicates an ability and willingness to operate the proposed facility in compliance with state and federal law and any conditions imposed on the licensee by the secretary.

History: L. 1986, ch. 226, § 5; L. 1992, ch. 192, §11; July 1.

65-3485. Same; reasons for approval or denial of application required; appeals.

(a) The secretary either shall approve or deny the application. A local ordinance, permit requirement or other requirement shall not prohibit the construction or modification of such a PCB disposal facility or restrict transportation to the facility.

(b) If the secretary denies the application, the secretary shall state the specific reason or reasons for denial in writing.

(c) Any person aggrieved by a final decision of the secretary may make an appeal to the district court within 30 days of notice of that decision.

History: L. 1986, ch. 226, § 6; L. 1992, ch. 192, § 12; July 1.

65-3486. Same; application for permit required, contents; application fee; investigation and inspection by secretary.

(a) No person shall construct, modify or operate a PCB disposal facility or otherwise dispose of PCB within this state without a permit from the secretary. The application for a permit shall contain:

(1) The name and address of the applicant;

(2) the location of the proposed facility;

(3) the management program for the operation of the facility, including the person to be responsible for the operation of the facility and a resume of the person's qualifications, the proposed method of disposal, the proposed

method of pretreatment or decontamination of the facility, if any, and the proposed emergency measures to be provide at the facility;

(4) the name, address and short resume for each officer, director or partner of the company and any party owning more than 10% of its stock or ownership interest for any company which will either own or operate the facility and copies of the company's annual financial report for the three years preceding the date of the application;

(5) a description of the size and type of facility to be constructed, including the height and type of fencing to be used, the size and construction of structures or buildings, warning signs, notices and alarms to be used, the type of drainage and waste treatment facilities and maximum capacity of such facilities, the location and source of each water supply to be used and the location and type of fire control facilities to be provided at the facility;

(6) a preliminary engineering sketch and flow chart showing proposed plans and specifications for the construction and development of the disposal facility and the waste treatment and water supply facilities, if any, to be used at the facility;

(7) a geologist's survey report indicating land formation, location of water resources and direction of the flows thereof and the geologist's opinion relating to the potential of contamination of water resources including, but not limited to, possible sources of such contamination;

(8) the names and addresses of the applicant's current or proposed insurance carriers, including copies of insurance policies then in effect; and

(9) any other information considered necessary by the secretary.

(b) For initial review of an application for a PCB disposal facility, the applicant shall submit an application fee not to exceed \$25,000 with the permit application. After the initial review of a permit application, the secretary shall determine the cost of such review. If the cost is less than the application fee required by this subsection, the secretary shall refund to the applicant the amount which exceeds the cost of review. In cases of a permitted facility sub-

mitting an application for the construction and operation of an additional facility on the permitted site, the permit fee shall not exceed \$10,000. For renewal of a permit, the permit holder shall submit a permit renewal fee not to exceed \$10,000, the amount of which shall be determined by the secretary.

(c) Before reviewing any application for permit, the secretary shall conduct a background investigation of the applicant. The secretary shall consider the financial, technical and management capabilities of the applicant as conditions for issuance of a permit. The secretary may reject the application without conducting an investigation into the merits of the application if the secretary finds that:

(1) The applicant previously held a permit under this section and that permit was revoked by the secretary; or

(2) the applicant failed or continues to fail to comply with any of the provisions of the air, water or waste statutes, including rules and regulations issued thereunder, relating to environmental protection or to the protection of public health in this or any other state or the federal government of the United States, or any condition of any permit or license issued by the secretary; or if the secretary finds that the applicant has shown a lack of ability or intention to comply with any provision of any law referred to in this subsection or any rule, regulation, order or permit issued pursuant to any such law as indicated by past or continuing violations. In case of a corporate applicant, the secretary may deny the issuance of a permit if the secretary finds that the applicant or any person who holds an interest in, or exercises total or partial control of or does business with the applicant or a principal of the corporation was a principal of another corporation which would not be eligible to receive a permit because of the provisions of this act.

(d) Upon receipt of a permit application meeting the requirements of this section, the secretary or an authorized representative of the secretary shall inspect the location of the proposed facility and determine if the same complies with this act and the rules and regulations promulgated under this act. An

inspection report shall be filed in writing by the secretary before issuing a permit and shall be made available for public review.

History: L. 1986, ch. 226, § 7; May 8.

65-3487. Same; time for decision of secretary on applications; extensions. The secretary shall make a final decision on a permit application within 240 days of the receipt of the application unless the time for such decision has been extended by the secretary upon written request of the applicant or as otherwise provided by rules and regulations adopted by the secretary for the issuance of permits under this act.

History: L. 1986, ch. 226, § 8; L. 1992, ch. 192 § 13; July 1.

65-3488. Time period for permits; permits revocable or subject to suspension; appeals.

(a) Permits for PCB disposal facilities shall be issued for fixed terms not to exceed 10 years.

(b) Plans, designs and relevant data for the construction of PCB disposal facilities shall be prepared by a professional engineer licensed to practice in Kansas and shall be submitted to the department for approval prior to the construction, modification or operation of such a facility.

(c) Permits granted by the secretary, as provided in this act, shall be revocable or subject to suspension whenever the secretary determines that the PCB disposal facility is, or has been constructed in violation of this act or the rules and regulations or standards adopted pursuant to the act, or is creating a hazard to the public health or safety or to the environment, or for failure to make payment of any fee to any funds created under this act.

(d) In case any permit is denied, suspended or revoked any person aggrieved by such decision may request a hearing before the secretary in the same manner provided by K.S.A. 65-3440, and amendments thereto.

History: L. 1986, ch. 226, § 9; May 8.

65-3489. Same; applicability of act. The provisions of this act shall not apply to a PCB disposal facility in operation or under

construction on the effective date of this act or to any mobile PCB treatment process, excluding incineration, which is designed to change the physical or chemical character or composition of any PCB.

History: L. 1986, ch. 226, § 10; May 8.

65-3490. Same; violations of act; notice and penalties; appeals.

(a) The secretary or the director of the division of environment, if designated by the secretary, upon a finding that a person has violated any provision of this act or any rule and regulation adopted by the secretary pursuant to this act may impose a penalty not to exceed \$10,000 which shall constitute an actual and substantial economic deterrent to the violation for which it is assessed and, in the case of a continuing violation, every day such violation continues shall be deemed a separate violation.

(b) No penalty shall be imposed pursuant to this section except after notice of violation and opportunity for hearing upon the written order of the secretary or the director of the division of environment, if designated by the secretary, to the person who committed the violation. The order shall state the violation, the penalty to be assessed and, in the case of an order of the director of the division of environment, the right to appeal to the secretary for a hearing thereon. Any person may appeal an order of the director of the division of environment by making a written request to the secretary for a hearing within 15 days of receipt of such order. The secretary shall hear the person within 30 days after receipt of such request, unless such time period is waived or extended by written consent of all parties or by a showing of good cause, and shall give not less than 10 days' written notice of the time and place of the hearing. Within 30 days after such hearing and receipt of briefs or oral arguments, unless such time period is waived or extended by written consent of all parties or by a showing of good cause, the secretary shall affirm, reverse or modify the order of the director and shall specify the reasons therefor. Nothing in this act shall require the observance of formal rules of evidence or pleading at any hearing before the

secretary or director.

(c) Any party aggrieved by an order under this section shall have the right of appeal in the same manner provided by K.S.A. 65-3440, and amendments thereto.

History: L. 1986, ch. 226, § 11; May 8.

Article 55. PCB Facility Construction Permit Regulations

28-55-1. Applicability and definitions.

(a) Substances that are regulated by these regulations include dielectric fluids, contaminated solvents, oils, waste oils, heat transfer fluids, hydraulic fluids, paints, sludges, slurries, dredge spoils, soils, materials contaminated as a result of spills, and any other chemical substances or combination of substances which contain a total PCB concentration of 50 parts per million (ppm) or more.

(b) "Material or substantial alteration or addition" means an increase in storage, treatment or disposal capacity by a factor of 50 percent or an increase in facility investment by a factor of 50 percent excluding inflation.

(c) "Minor permit modification" means any modification which does not expand or enlarge a facility beyond the boundaries established by an existing permit and is not a material or substantial alteration or addition. (Authorized by and implementing K.S.A. 65-3481 as enacted by L. 1986, ch. 226, sec. 2; effective, T-87-37, Nov. 19, 1986; effective May 1, 1987.)

28-55-2. PCB facility construction permit application.

(a) New facility application. After July 1, 1986 all applications to construct a PCB facility, which does not have an existing permit from the secretary, shall provide information which documents compliance with K.A.R. 28-55-5 and includes a business concern disclosure statement. The business concern disclosure statement shall include the following information: the name of the corporation, past corporate names, the place or places of incorporation, the names of officers, the names of former officers and directors, partnership or joint venture information, ownership and debt liability, subsidiaries and stock holdings, employee data, experience and credentials, licenses and permits, environmental violations history, environmental judgements and litigation, and criminal proceedings. This information shall be submitted on forms

provided by the department.

(b) Permit modification application. An expansion, enlargement or modification of a facility beyond the specified areas indicated in the existing permit constitutes a new proposal for which a new construction permit application is required.

(c) Minor permit modifications. Minor modifications to permitted PCB facilities shall not require submittal of an amended permit application. The permittee shall submit a written notice to the department describing the modifications and all data justifying the designation as a minor permit modification. Upon written approval from the department the permittee may initiate the modification. Minor permit modifications are not required to meet the public notice, hearing and inspection procedures specified in K.A.R. 28-55-3(b), (c) and (g). (Authorized by and implementing K.S.A. 65-3481 as enacted by L. 1986, ch. 226, sec. 2; effective, T-87-37, Nov. 19, 1986; effective May 1, 1987.)

28-55-3. Procedures for review of PCB (polychlorinated biphenyl) facility permit applications.

(a) Approval or denial of permit application. When an application to construct or modify a PCB facility is complete, a draft permit shall be prepared by the secretary or the application shall be denied by the secretary.

(1) If the secretary denies the permit application, the applicant shall receive a written notification from the secretary stating the reasons for denial.

(2) If the secretary decides to prepare a draft permit, the draft permit shall contain all conditions and requirements necessary for construction or modification of the facility. The permit may include any special conditions or procedures that the applicant shall meet or follow to be in compliance with these or other state or federal regulations.

(b) Public notice and public comment period. After the secretary completes the draft permit, a

public notice shall be prepared by the secretary. The public notice shall be published in a daily or weekly local newspaper of general circulation and the Kansas Register. The public notice shall contain the following information:

- (1) Name and address of the agency processing the permit application;
- (2) name and address of the permittee or permit applicant;
- (3) a brief description of the PCB treatment, storage, or disposal facility;
- (4) name, address, and telephone number of a person from whom any interested persons may obtain further information, including copies of the draft permit; and
- (5) date, time, and place of the public hearing, including a brief description of the nature and purpose of the hearing.

(c) Public hearings.

- (1) The notice of the public hearing shall be published at least 60 days before the hearing.
- (2) The public hearing shall be conducted at a location near the facility.
- (3) A hearing officer shall be designated by the secretary.
- (4) Any person may submit oral or written comments and data concerning the draft permit application. Reasonable limits may be set upon the time allowed for oral statements, and the submission of statements in writing may be required.
- (5) A tape recording or written transcript of the hearing shall be made available to the public upon request.
- (6) A report to the secretary shall be submitted by the hearing officer. The report shall include all written and oral comments submitted during the public comment period. The report may also recommend findings and determinations.

(d) Approval or denial of the draft permit. After the close of the public comment period, a decision to approve or deny the draft permit shall be made by the secretary.

(1) If the secretary denies the draft permit, a written notification of the reasons for denial shall be provided to the applicant by the secretary.

(2) The applicant and each person who has submitted written comments shall be notified of

the decision by the secretary.

(3) Notice of the final decision shall be published in the Kansas Register.

(e) Monitoring required. As a condition for issuing the permit, the permittee may be required by the secretary to install and operate an approved environmental quality monitoring system. Approval of the monitoring system shall be based on the following factors used to measure environmental quality:

- (1) The location of groundwater monitoring wells, air monitoring stations, and other required sampling points;
- (2) plans and specifications for the construction of the monitoring systems;
- (3) the constituents being monitored and their concentration limits;
- (4) frequency of sampling; and
- (5) analyses to be performed.

(f) Notation on the deed. Within 60 days of receiving a permit, the owner or operator shall record, in accordance with state law, a notation with the county register of deeds where the property is located that the land has been used to treat, store, or dispose of PCB, and that copies of all permits are available at the offices of the department.

(g) Final inspection of construction. Upon completing construction of the facility or modifications to the facility, the permittee shall notify the secretary in writing. An inspection of the facility to assure that construction was completed in accordance with the approved permit application and permit shall be conducted by the department. The permittee shall not begin operation until the secretary approves of the construction in writing. (Authorized by and implementing K.S.A. 65-3481; effective, T-87-37, Nov. 19, 1986; effective May 1, 1987; amended March 22, 2002.)

28-55-4. Modification or transfer of permits.

(a) Modification of permits. The department may, at any time, modify a permit or any term or condition of a permit to include the following:

- (1) Special conditions required to comply with the requirements of these regulations;

(2) conditions to avoid hazards to public health or the environment;

(3) conditions to abate a public nuisance; or

(4) modifications proposed by the permittee and approved by the department. Modifications to the permit shall follow the public notice, and hearing procedures contained in K.A.R. 28-55-3(b) and (c).

(b) Transfer of permits. Before any assignment, sale, conveyance, or transfer of all or any part of the property upon which a PCB facility is located, and before any change in the responsibility for operation of a facility is made, the permittee shall notify the department, in writing, of the intent to transfer title or operating responsibility, at least 30 days in advance of the date of transfer. The person to whom transfer is made shall submit a disclosure statement as required by K.A.R. 28-55-2(a) and any other information required by the secretary. If no reason exists to deny the permit, the secretary shall issue a permit to the new permittee. (Authorized by and implementing K.S.A. 65-3481 as enacted by L. 1986, ch. 226, sec. 2; effective T-87-37, Nov. 19, 1986; effective May 1, 1987.)

28-55-5. Standards for PCB facilities. Each PCB treatment, storage, and disposal facility shall comply with all applicable requirements of 40 CFR part 761, subpart D, as in effect on July 1, 2000 and 40 CFR part 264, subparts B, C, D, G, and H, as in effect on July 1, 2000, which are hereby adopted by reference. (Authorized by and implementing K.S.A. 65-3481; effective, T-87-37, Nov. 19, 1986; effective May 1, 1987; amended March 22, 2002.)